1270.

SUPREME COURT OF THE UNITED STATES,

No. 163.

MARIA MATHISON ET AL., PLAINTIFFS IN ERROR,

vs.

THE BRANCH BANK OF ALABAMA AT MOBILE.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

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J. & G. S. GIDEON, printers.

THE STATE OF ALABAMA:

Be it remembered, that on the 1st day of May, A. D. 1847, there was filed in the office of the clerk of the Supreme Court of said State a writ of error, in words and figures as follows, that is to say:

THE UNITED STATES OF AMERICA:

The President of the United States, to the judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a certain cause lately pending in the said supreme court, holden for the State aforesaid, wherein it was decided that the branch of the Bank of the State of Alabama, at Mobile, should recover of Maria Mathison, John Darrington, and Robert D. James, and their securities on a writ of error bond, Billups Gayle, John Gayle, and Edward M. Ware, the amount of a judgment recovered against the said Maria Mathison, John Darrington, and Robert D. James, in the circuit court of Mobile county, with ten per cent. damages thereon and interest, and the costs of the circuit court; and also of said supreme court, manifest error hath intervened, to the great damage of the said Maria Mathison, John Darrington, Robert D. James, and their securities aforesaid, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington city on the first Monday of December next, in the Supreme Court to be then and there held. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the hon. Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, A. D. one thousand eight hundred and forty six. JOHN FITTS,

Clerk circuit court of the United States, southern dist. of Alabama.

Writ of error allowed, 23d April, 1847.

J. McKINLEY.

THE STATE OF ALABAMA:

Be it remembered, that at December term, 1846, of the supreme court of the State aforesaid, there was filed in the office of the clerk of said court a certificate from the clerk of the circuit court of Mobile county, in words and figures as follows, that is to say:

THE STATE OF ALABAMA,

Circuit court, Mobile county:

I, Augustus Brooks, clerk of the circuit court of said county, certify, that by the records of said court it appears, that at a circuit court begun and held for the county of Mobile on the fourth Monday after the fourth Monday of October, in the year of our Lord one thousand eight hundred and forty-five, the Branch of the Bank of the State of Alabama, at Mobile, recovered a judgment against Maria Matheson, John Darrington, and Robert D. James, for the sum of ten thousand five hundred and seventy-three $\frac{82}{100}$ dollars, besides costs of suit; and that on the 29th day of May, in the year 1846, the said Maria Matheson and John Darrington, with Billups Gayle, John Gayle, and Edward M. Ward, as security, entered into bond, as the statute in such provides, for the prosecuting with effect a writ of error in said cause, and that further proceedings therein were suspended until said cause shall be determined in the supreme court of said State.

Given under my hand and seal of office this 1st day of January, in the year of our Lord one thousand eight hundred and forty-seven, &c. [SEAL.] A. BROOKS, *Clerk*.

And on Thursday, the 22d day of January, 1847, being a day of the December term, 1846, of said court:

Present, all the judges of said court:

Proceedings were had on the certificate aforesaid, and a judgment rendered thereon, which judgment is in words and figures as follows, that is to say:

THE BRANCH BANK OF MOBILE, vs. MARIA MATHISON et al. } 103. From Mobile circuit court.

The Branch of the Bank of the State of Alabama at Mobile, by Lesesne, attorney, produces here the certificate of the clerk of the circuit court of Mobile county, shewing that at the fall term, 1845, of said court, they recovered judgment against Maria Mathison, John Darrington, and Robert D. James, for the sum of ten thousand five hundred and seventy-three dollars and eighty-two cents, damages; that on the 29th day of May, 1846, the said Maria Mathison et al. sued out a writ of error, returnable to the present term of this court, and with Billups Gayle, John Gayle, and Edward M. Ward, entered into bond for the prosecution thereof; and the transcript of the record not being here filed, it is, on motion of said Branch Bank, considered that said writ of error be dismissed, that said judgment be affirmed, and that said Branch Bank recover of said Maria Mathison, John Darrington, Robert D. James, Billups Gayle, John Gayle, and Edward M. Ward, the amount of the judgment aforesaid, ten per cent. damages thereon, and interest, and the costs of this cause in this court and in said circuit court.

Bond.

UNITED STATES OF AMERICA,

The State of Alabama:

We acknowledge ourselves to be held and firmly bound to the Branch of the Bank of the State of Alabama at Mobile, in the penal sum of twenty-five thousand six hundred and eleven $\frac{22}{100}$ dollars, to be paid to the said bank and its successors; which sum, well and truly to be paid, we, and each of us, do bind ourselves, our heirs and assigns, by these presents. Sealed with our seals, and dated this 23d April, 1847.

The condition of this obligation is such, that whereas the said bank hath recovered a judgment in the supreme court of the State aforesaid for the sum of ten thousand five hundred and seventy-three $\frac{82}{100}$ dollars, with ten per cent. damages, and interest from the second day of December, 1845, on the said ten thousand five hundred and seventy-three $\frac{82}{100}$ dollars, with the costs of the supreme court, and of the circuit court of Mobile county, against Maria Mathison, John Darrington, Robert D. James, Billups Gayle, John Gayle, and Edward M. Ware; and whereas the said defendants have sued out a writ of error to the Supreme Court of the United States, returnable to the first Monday of December next: Now, if the said defendants shall prosecute the writ aforesaid to effect, and shall satisfy all such damages as the plaintiff may sustain from the wrongful suing out of the same, and shall do and perform such judgment as the Supreme Court may render in this behalf, then this obligation to be wholly null and void, else to have full force and virtue.

Signed,

J. DARRINGTON, [SEAL.]
B. GAYLE, [SEAL.]
E. M. WARE, [SEAL.]
J. GAYLE, [SEAL.]
B. BOYKIN, [SEAL.]
C. J. McRAE, [SEAL.]
WM. FORBES. [SEAL.]

This bond is approved, and a supersedeas is awarded, 23d April, 1847, at Mobile. J. McKINLEY.

UNITED STATES OF AMERICA:

The President of the United States, to the Branch of the Bank of the State of Alabama, at Mobile:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error filed in the supreme court of the State of Alabama, wherein Maria Mathison, John Darrington, Robert D. James, Billups Gayle, John Gayle, and Edward M. Ware are plaintiffs in error, and the Branch of the Bank of the State of Alabama at Mobile is defendant in error, to shew cause, if any there be, why judgment rendered against the said Maria Matheson, John Darrington, Robert D. James, Billups Gayle, John Gayle, and Edward M.

Ware, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness hon. John McKinley, one of the justices of the Supreme Court of the United States, this 23d day of April, 1847.

J. McKINLEY.

THE STATE OF ALABAMA, *ss:*

I, James B. Wallace, clerk of the supreme court of the State aforesaid, do hereby certify, that the foregoing is a correct transcript of the citation filed in the cause therein stated, on the 17th April, 1847, the original of which is on file, and remains of record in my office.

Given under my hand and official seal at office, at the Capitol, this 18th May, A. D. 1847.

[L. S]

JAMES B. WALLACE,
Clerk Supreme Court, Alabama.

Received May 24th, 1847, and on the 14th day of October, 1847, I served a copy of the within citation on H. B. Halcombe, assistant commissioner of the Branch of the Bank of the State of Alabama, at Mobile.

GEORGE HUGGINS,
Sheriff of Mobile county.
By M. J. D. BALDWYN,
Deputy Sheriff.

THE STATE OF ALABAMA:

I, James B. Wallace, clerk of the supreme court, do hereby certify, that the foregoing is a correct transcript of the record and proceedings of said court, in the case of the Branch Bank of Mobile vs. Maria Mathison et al., the originals of which are on file and remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed my private seal, (having no seal of office,) this 27th December, 1847, at office in the Capitol.

[SEAL.]

JAMES B. WALLACE,
Clerk Supreme Court, Alabama.

Filed 11th March, 1848.